

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3808 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy No :
of the judgement?

4. Whether this case involves a substantial question No :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? No :

EXECUTIVE ENGINEER

Versus

JOTIA PARSING SAGADA

Appearance:

MR AD OZA for Petitioner

MR YATIN SONI for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 25/08/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

First Appeal is already admitted by order dated
June 23, 1999, but in Civil Application No. 5434/99
filed by the appellant for stay of the impugned decree,

rule was issued making it returnable on July 30, 1999. Ad-interim relief was also granted on conditions stipulated in the said order and thereafter the said Civil Application was adjourned from time to time at the request of learned advocates. That is how the appeal with civil application is placed before the Court. In view of the joint request made by the learned Counsel for the parties, the appeal is taken-up for final hearing today.

2. By means of filing this appeal under section 96 of the Code of Civil Procedure, 1908, Executive Engineer (O & M) Division : Baharpura, Gujarat Electricity Board, Dahod has challenged legality of judgment and decree dated January 22, 1999 rendered by the learned 3rd Jt. Civil Judge (S.D.), Panchmahals at Godhra in Special Civil Suti No. 42/88 by which the appellant is directed to pay a sum of Rs. 2,62,000/- together with interest at the rate of 12% per annum from November, 1985 till its realisation as damages to the respondent.

3. The incident in question took place on July 10, 1985. Minor Himraj Chunia, who was aged about 4 years, on the date of incident was going through farm of his maternal uncle situated in the sim of village Vankiya, Taluka : Dahod. In the farm, there was one electric pole. On the date of incident, wires were hanging from the pole, as a result, minor Himraj Chunia who was passing through the farm, came in contact with loose live electric wire and sustained injuries on his both palms due to electric shock. He also received other burn injuries because of electric shock. After the incident, minor was admitted in Dahod Government Hospital i.e. Cottage Hospital where his two hands were amputated from wrist. Regarding the incident in question, a police complaint was also filed with Dahod Police Station. According to grand father of the respondent, who was guardian of minor Himraj, the incident in question took place due to negligence on the part of the appellant. Under the circumstances, grand-father of minor Himraj, as guardian, instituted Special Civil Suit No. 42/88 in the Court of Civil Judge (S.D.), Godhra, District : Panchmahals and claimed damages of RS. 2,62,000/- from the appellant under different heads. During the pendency of suit, grand-father of minor Himraj expired and, therefore, the present respondent was brought on record as guardian of the minor.

4. On summons being served, the appellant contested the suit by filing written statement at Exh.56. In the reply, it was averred that the suit was liable to be

dismissed because of non-joinder of necessary parties and also because it was time barred. What was claimed therein was that as specific date of the incident was not mentioned in the plaint, suit was liable to be dismissed. It was asserted in the reply that after receipt of notice dated February 3, 1988, the appellant had inquired into the matter and recorded statements as well as had prepared report which established that the incident in question had not taken place at all. It was further stated in the written statement that minor Himraj had climbed up the pole and tried to hold the live wires through his palms, as a result of which, he sustained injuries and, therefore, the suit was liable to be dismissed.

5. Upon rival assertions of the parties, necessary issues for determination were raised by the Trial Court at Exh.10. In order to substantiate the claim advanced in the plaint, minor Himraj was examined at Exh.57; whereas the respondent who was brought on record as guardian of minor, was examined at Exh.60. On behalf of Gujarat Electricity Board, Deputy Engineer Mr. S.R.Sheth was examined at Exh.73. The plaintiff also produced documentary evidence, such as medical certificate at Exh.58 etc. On appreciation of evidence led by the parties, Trial Court held that it was proved by the respondent that because of appellant's negligence in maintaining electric pole which was installed in the farm of the respondent, minor Himraj sustained permanent disability as described in the plaint. The learned Judge had advantage of noticing the injuries sustained by minor when minor entered witness box for the purpose of proving the case pleaded in the case. On consideration of the injuries which were noticed by the learned Judge himself as well as medical certificate, learned Judge deduced that the physical disability suffered by minor Himraj was 100%. In view of cogent and reliable evidence led by the plaintiff regarding damages, the Trial Court held that decree for the whole claim should be passed with interest at the rate of 12% per annum from the date of incident till its realisation. In the ultimate analysis, the Trial Court has decreed the suit for Rs. 2,62,000/- together with interest at the rate of 12% per annum from November, 1985 till its realisation and the entire costs of the suit by the impugned decree, giving rise to present appeal.

6. Learned Counsel for the appellant submitted that the evidence led by the respondent does not establish that there was any negligence on the part of the appellant in maintaining the electric pole which was

installed in the field of the respondent or the wires which were hanging from the pole and, therefore, the impugned decree should be set aside. It was claimed that before decreeing the suit, the Trial Court did not appreciate the deposition of Deputy Engineer Mr. Sheth recorded at Exh.73 in its true perspective and, therefore, the appeal should be allowed. What was stressed was that no reliable evidence was led by the respondent regarding income of the injured and, therefore, decree for a sum of Rs.2,62,000/- should not have been passed by the learned Judge. In the alternative, it was pleaded that in any view of the matter, amount of damages could not have been ordered to be paid to the respondent with interest at the rate of 12% per annum from November 1985 i.e. the date of incident till its realisation and, therefore, that part of the decree deserves to be modified.

7. Mr. Y.S.Soni, learned Counsel for the respondent contended that evidence of minor Himraj and the evidence of the respondent, who is maternal uncle of minor Himraj, clearly establishes that the appellant was negligent in maintaining electric pole which was installed in the farm of the respondent and therefore, the well-founded finding recorded by the Trial Court to the effect that the appellant was negligent in maintaining the pole as well as wires hanging from the pole, should be upheld by the Court in this appeal. It was emphasised that medical evidence on record proves that minor Himraj has sustained 100% disability and, therefore, it cannot be said that any error is committed by the Trial Court in decreeing the suit in favour of minor Himraj. The learned Counsel for the respondent emphasised that because of incident, both the hands of minor Himraj were required to be amputated from wrist and as his life has become useless as well as miserable, direction given by the Trial Court to the appellant to pay the amount of damages with interest at the rate of 12% per annum from the date of incident in question, should not be interfered with by this Court in the present appeal.

8. We have heard the learned Counsel for the parties at length. We may state that pursuant to order dated June 23, 1999, Court has received record of the case and the same is taken into consideration before deciding the present appeal. The evidence of minor Himraj Chunia recorded at Exh.57, makes it clear that on the date of incident he had gone to farm of his maternal uncle for the purpose of grazing cattle and come in contact with live wire which was hanging from the electric pole installed in his farm. His evidence establishes that one

electric wire was lying on the surface of the land and, therefore, he met with an accident and sustained injuries on his both palms. According to him. he was removed to Hospital where both his hands were amputated from wrist. The child witness also asserted before the Court that his maternal uncle had lodged complaint with police station and because of the accident, he was not able to do day to day work like putting on clothes etc. His evidence shows that he had lost his parents in his early days. The claim advanced by minor Himraj that because of the accident his two hands were amputated from wrist, is amply borne out from the contents of medical certificate produced at Exh.58. Though this child witness was searchingly cross-examined by the present appellant, nothing could be brought on record of the case to doubt his version that the incident in question had taken place as claimed by him. The evidence of minor Himraj gets sufficient corroboration from the evidence of Jotia Parsing Sagada examined at Exh.60. According to this witness, on the date of incident, there was rain and, therefore, water had accumulated in his field, as a result, minor Himraj did not notice the live wire lying on the earth and sustained injuries when he came in contact with the said live wire. This witness is also cross-examined at length by the learned Counsel for the appellant, but nothing was elicited to doubt his version. Though the Deputy Engineer Mr. Sheth was examined on behalf of Gujarat Electricity Board at Exh.73, it could not be established by the Board that minor boy Himraj had climbed up the pole and sustained electric shock injuries. The report prepared and produced at Exh.74 was of no consequence, inasmuch as the incident had taken place in the year 1985; whereas the report was prepared in the year 1988. The learned Judge on appreciation of evidence has rightly held that the officers of the Gujarat Electricity Board were negligent in maintaining the wires on the pole and, therefore, the Board was also liable to satisfy the claim advanced in the plaint. It is not necessary for us to reiterate the reasons assigned by the learned Judge for coming to the conclusion that negligence on the part of the present appellant is proved by the respondent. Those reasons are to be found in Para-4 of the impugned judgment and we agree with those reasons. Under the circumstances, the submission that the appellant was not negligent in maintaining the pole or wire thereon and, therefore, the decree should be set aside, cannot be accepted. The finding regarding negligence being just, is hereby confirmed.

9. So also, the learned Counsel for the appellant has failed to point out as to how the finding recorded by

the learned Judge regarding quantum of damages is erroneous. It may be stated that the evidence of minor Himraj was recorded before the learned Judge. The learned Judge had advantage of noticing injuries sustained by the minor due to accident. After noticing the injuries as well as taking into consideration the medical certificate, it is deduced by the learned Judge that disability suffered by minor Himraj is 100%. The amount of damages awarded to the minor under different heads, such as- pain, shock and suffering, future loss of income, attendant charges, actual expenses incurred for medicines etc., cannot be said to be erroneous at all and, therefore, the finding recorded by the learned Judge that minor Himraj is entitled to damages to the tune of Rs. 2,62,000/- is hereby confirmed.

10. In the operative part of the decree, the learned Judge has directed that the appellant should pay a sum of Rs. 2,62,000/- as damages to minor Himraj together with interest at the rate of 12% per annum from November, 1985 till its realisation and the entire costs of the suit. It may be stated that though the incident in question had taken place in the month of July, 1985, the suit was filed in the year 1988 and liability of the present appellant was determined by decree dated January 22, 1999. Under the circumstances, direction should not have been given to pay amount of damages with interest at the rate of 12% per annum from the date of incident. Having regard to the facts of the case, we are of the opinion that direction to pay amount of damages with interest from the date of filing of the suit ought to have been issued by the Trial Court.

For the foregoing reasons, the appeal partly succeeds. It is held that the respondent would be entitled to recover a sum of Rs.2,62,000/- together with interest at the rate of 12% per annum from March 22, 1988 which is the date of filing of the suit, till its realisation and the entire costs of the suit. Rest of the directions given in the decree are not disturbed at all. The appeal is allowed to the extent indicated hereinabove only, with no order as to costs.

(patel)